IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1115 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI DHARMENDRA ARVINDBHAI SHAH - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR CHETAN K PANDYA for Petitioner No(s).: 1.

MR KOGJE, Ld. APP for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 25/07/2005

ORAL JUDGMENT

1.Heard the learned Counsel for the parties for final disposal.

2.The short facts of the case are that there was a

complaint by Arunkumar Purohit against the petitioner and one Shri Virambhai Lilabhai Desai under Prevention of Corruption Act. The raid was carried out and as per the prosecution case, the packet of the currency was accepted by Shri Virambhai Lilabhai Desai and thereafter Shri Virambhai Lilabhai Desai went away. As per the complaint, the amount was to be given to the petitioner through Shri Virambhai Lilabhai Desai. It appears that at the stage of according sanction, the State Government granted sanction for prosecuting Shri Virambhai Lilabhai Desai, but declined sanction for the petitioner herein. The said decision of the State Government for not according sanction for prosecuting the petitioner was, inter alia, challenged by the original complainant in Special Criminal Application No.1162/2003 and in the said matter this Court as per the judgement dated 20.7.2005 has allowed the petition and has directed the State Government to reconsider the matter. As the facts pertaining to the complaint, ACB trap and up to that stage of sanction etc., are already dealt with in the said matter, it would be just and proper not to repeat the said aspect in the present judgement.

3. It appears that pending the investigation the residential premises of the petitioner was raided and

certain share certificates, bonds, etc., total worth Rs.5,29,240/- were seized together with one diary of the Gujarat State for the year 2002. It appears that the petitioner on 1.10.2004 made application to the learned Special Judge being Application Ex. 30 for release of muddamal/properties which were seized by the Investigating Officer from the possession of the petitioner. The learned Special Judge, after hearing both the sides observed that in connection with the sanction the matters are pending in the High Court and, therefore, the learned Special Judge dismissed the application. It may be recorded that when the learned Special Judge considered the two matters, one preferred by Shri Virambhai Lilabhai Desai being Criminal Misc. Application No.8847/2003 and the another matter being Special Criminal Application No.1162/2003. The learned Judge did consider that as sanction was not granted, the order was passed by the Court of the Special Judge to discharge, but the learned Judge found that as on the said aspect also the matter is likely to be decided within some time in the High Court, it would be proper not to show any hast for disposal of the muddamal and, therefore, considering the special circumstances the learned Judge has passed the order of dismissing the application on 8th October, 2004. It also appears that

the learned Judge clarified that if any order is passed by the High Court in the pending matters, the same shall be intimated and appropriate decision shall be taken. It is under these circumstances, the present petitioner has approached this Court by preferring this petition.

4. Heard Mr.Raju, learned Counsel appearing with Mr.Pandya, learned Counsel for the petitioner and Mr.Kogje, learned APP for the respondent State.

5. This Court has already rendered the decision in the petition preferred by Shri Virambhai Lilabhai Desai and as recorded by this Court in its order dated 20.7.2005, the petition is rejected as withdrawn. So far as the petition preferred by the original complainant on the point of sanction being Special Criminal Application No.1162/2003 is concerned, as referred to herein above the judgement is delivered by this Court and for the reasons recorded in the said decision, this Court has found that certain important material is not considered by the State Government while considering the question of grant of sanction and consequently the order for declining the sanction is set aside and the matter is directed to be reconsidered at the level of the State Government on the aspects of according of sanction or otherwise qua the prosecution of the petitioner herein.

Since the order of the learned Special Judge below application for discharge was passed on the basis of non-granting sanction by the State Government, in the very petition this Court has also quashed the order of discharge by observing that the parties may assert their rights after the question of sanction is finalized. Therefore, the basis on which the learned Special Judge dismissed the application of the petitioner is no more surviving in as much as both the petitions being Criminal Misc. Application No.8847/2003 preferred by Shri Virambhai Lilabhai Desai as well as the Special Criminal Application No.1162/2003 preferred by the Original Complainant, Shri Purohit are decided. It is true that the State Government will have to reconsider the issue in light of the decision of this Court in Special Criminal Application No.1162 of 2003 and it may be that pending the question of sanction for prosecution the learned Special Judge will have to consider the matter for exercising his judicial discretion for release of the muddamal or not.

6. Mr.Raju, learned Counsel appearing for the petitioner, submitted that the charge against the petitioner is for illegal gratification and is not for disproportionate assets and, therefore, he submitted that the items which are not concerned with the subject matter of the

complaint deserves to be released by the learned Special Judge.

7. Mr.Kogje, learned APP, on the other hand, submitted that as there was allegation of illegal gratification in the complaint, it cannot be finally viewed that the properties which are seized by the Investigating Agency, are not acquired by such illegal means.

8. As such Mr.Raju is right in submitting that there is no charge for disproportionate assets against the petitioner. Therefore, the learned Special Judge would be required to consider the matter for release of the muddamal keeping in view the subject matter of the complaint as well as the other circumstances, as may be brought to his notice and may decide the application in accordance with law.

9. In view of the aforesaid discussions, it appears that as such it was required for the leaned Special Judge to decide the application for release of the muddamal in either way. Instead of the same, as the application is dismissed only on the ground that the matters are pending before the High Court, and as now both the proceedings before the High Court being Special Criminal Application No.1162/2003 and Criminal Misc. Application No.8847/2003 are decided, it will be required for the learned Judge to consider the

application afresh by taking into consideration the subsequent aspects also of the decision of this Court and other aspects, as may be permissible in law.

10. Hence, the present petition is partly allowed by directing the learned Special Judge to decide the application Ex. 30 once again keeping in view the subsequent aspects of the decision of this Court and other aspects, as may be permissible in law, after hearing all the parties to the proceedings, as early as possible, preferably within a period of three months from the date of receipt of the writ of this Court. Rule partly made absolute accordingly.

25.7.2005 **(Jayant Patel, J.)**

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